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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

=====

COURTNEY JAYNE, Individually and  
as Personal Representative of the  
ESTATE of M.Z.,

Plaintiff,

vs. Case No. 4:18-CV-4088-KES

CITY OF SIOUX FALLS,

Defendant.

=====

Videotaped Deposition of: JIM SIDERAS  
Date: April 30, 2019  
Time: 3:27 p.m.

=====

## APPEARANCES

Mr. Timothy W. Billion  
Robins Kaplan, LLP  
Sioux Falls, South Dakota

Attorney for the Plaintiff

Mr. James E. Moore  
Woods, Fuller Shultz & Smith, P.C.  
Sioux Falls, South Dakota

and

Ms. Karen Leonard  
Sioux Falls City Attorney's Office  
Sioux Falls, South Dakota

Attorneys for the Defendant

REPORTED BY: Audrey M. Barbush, RPR

VIDEOGRAPHER: Jeff Lambert

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## STIPULATION

1 It is hereby stipulated and agreed by and between the  
2 above-named parties through their attorneys of record, whose  
3 appearances have been hereinabove noted, that the videotaped  
4 deposition of JIM SIDERAS may be taken at this time and  
5 place, that is, at the offices of Woods, Fuller, Shultz &  
6 Smith, P.C., 300 South Phillips Avenue, Suite 300,  
7 Sioux Falls, South Dakota, on the 30th day of April, 2019,  
8 commencing at the hour of 3:27 p.m.; said deposition taken  
9 before Audrey M. Barbush, a Registered Professional Reporter  
10 and Notary Public within and for the State of South Dakota.  
11 Objections, except as to the form of the question, are  
12 reserved until the time of trial. Insofar as counsel are  
13 concerned, the reading and signing of the transcript by the  
14 witness is not waived.

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## I N D E X

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3	By Mr. Schrank	5
4	Exhibit Nos.:	Page
5	<u>Exhibit 35</u> - Keloland article, March 15, 2013	16
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1 THE VIDEOGRAPHER: We are now on the record.  
2 The deposition of Jim Sideras is being taken on  
3 April 30, 2019, commencing at approximately 1527, at  
4 the location of Woods, Fuller, Shultz & Smith, P.C.,  
5 300 South Phillips Avenue, Sioux Falls, South Dakota.

6 This deposition is taken in the matter of  
7 Courtney Jayne, individually and as personal  
8 representative of the Estate of M.Z., plaintiff, vs.  
9 City of Sioux Falls, defendant, venued in United States  
10 District Court, District of South Dakota, Southern  
11 Division, Case No. 4:14-CV-4088-KES.

12 Starting with the noticing party, would all  
13 counsel please voice-identify yourself and who you  
14 represent.

15 MR. BILLION: Tim Billion with Robins Kaplan,  
16 representing the plaintiff.

17 MR. MOORE: James Moore on behalf of the City of  
18 Sioux Falls.

19 MS. LEONARD: Karen Leonard with the City of  
20 Sioux Falls.

21 THE VIDEOGRAPHER: Thank you. Our court reporter  
22 is Audrey Barbush.

23 Would you please swear the witness.  
24  
25

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<p>1 What was the question again?</p> <p>2 Q The third sentence in the fourth paragraph says "The</p> <p>3 edge was difficult to see due to the large amount of</p> <p>4 foam from the water."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Is that consistent with your recollection of the 2013</p> <p>8 incident?</p> <p>9 A Yes.</p> <p>10 Q Let's turn to the page labeled CITY 00042.</p> <p>11 Do you have that page?</p> <p>12 A Yes.</p> <p>13 Q And this is -- appears to be a Sioux Falls Fire Rescue</p> <p>14 report; is that right?</p> <p>15 A Correct.</p> <p>16 Q And this was made on 3-14-2013 by an officer named</p> <p>17 Bukovich?</p> <p>18 A Correct.</p> <p>19 Q In the fourth paragraph, which begins with "I assumed</p> <p>20 Falls Park command..."</p> <p>21 A Uh-huh.</p> <p>22 Q The last two sentences of that paragraph read "We were</p> <p>23 not able to see the water where the victims went in or</p> <p>24 downstream from that point due to a large volume of</p> <p>25 foam created by the river flow, blocking view. The</p>	<p>1 "According to policy, everyone near the water was</p> <p>2 wearing a life jacket. However, working near the edge</p> <p>3 was recognized as a safety hazard."</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Do you agree that working near the edge of the river</p> <p>7 was a safety hazard given the conditions present?</p> <p>8 A The conditions and, also, it was night. It was a night</p> <p>9 operation. So that adds complexity to the operation.</p> <p>10 And regardless of -- for any type of water rescue,</p> <p>11 regardless if it's a lake, a pond, everybody's going to</p> <p>12 be wearing PFDs, personal flotation devices.</p> <p>13 Q So what I want to focus on is the condition of the</p> <p>14 river. With the foam and the high flow of water, that</p> <p>15 would have been a safety hazard regardless of whether</p> <p>16 it was day or night; is that correct?</p> <p>17 A Correct.</p> <p>18 Q And it was a hazard because the emergency responders</p> <p>19 there couldn't tell where the edge was; is that right?</p> <p>20 A Say that again.</p> <p>21 Q Well, the sentence in the second paragraph that we just</p> <p>22 read --</p> <p>23 A Uh-huh.</p> <p>24 Q -- the workers using pike poles near the edge could not</p> <p>25 tell where the water started or how deep the water was,</p>
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<p>1 foam was estimated to be 8 to 10 feet from the top of</p> <p>2 the foam to the top of the water."</p> <p>3 Do you see those sentences?</p> <p>4 A Yes, I do.</p> <p>5 Q Is that consistent with your recollection of the scene</p> <p>6 in March of 2013?</p> <p>7 A Yes, it is.</p> <p>8 Q Let's go to page CITY 00067. This also appears to be a</p> <p>9 Sioux Falls Fire Rescue report; is that correct?</p> <p>10 A Correct.</p> <p>11 Q The second paragraph, which is a very small paragraph,</p> <p>12 the second sentence says "Personnel who were working</p> <p>13 pike poles near the edge could not tell when the water</p> <p>14 started or how deep the water was."</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And that's consistent with your recollection of the</p> <p>18 scene?</p> <p>19 A Yes.</p> <p>20 Q And that would have been what you were referring to,</p> <p>21 I believe, when you said sometimes there could be</p> <p>22 hazards, putting people in harm's way. There's dangers</p> <p>23 for the first responders to be there, right?</p> <p>24 A Yes.</p> <p>25 Q In the first sentence of the next paragraph, it says</p>	<p>1 that would be a safety hazard as well, correct?</p> <p>2 A Correct. Any time we're working near the edge of -- in</p> <p>3 the Falls it's always a safety hazard, because you</p> <p>4 don't want people to fall into the water.</p> <p>5 Q Well, and the rocks are slippery there, right?</p> <p>6 A I can't say that they were, but more than likely --</p> <p>7 they normally are.</p> <p>8 Q And if foam is obscuring the edge of the water and the</p> <p>9 drop-off into the water, that would be a safety hazard</p> <p>10 as well.</p> <p>11 A Correct.</p> <p>12 Q And you would agree with me that the Falls are,</p> <p>13 in fact, a hazard then, right?</p> <p>14 MR. MOORE: Object to form.</p> <p>15 BY MR. BILLION:</p> <p>16 Q You can answer.</p> <p>17 A Could you say it again, then?</p> <p>18 Q You would agree with me that the Falls are, in fact, a</p> <p>19 hazard, right?</p> <p>20 A No. I need you to define "hazard." I mean...</p> <p>21 Q I'm using the ordinary definition of something that is</p> <p>22 unsafe or poses a danger to people.</p> <p>23 A I would have to say there's too many variables to agree</p> <p>24 with you. There is -- we have thousands of people down</p> <p>25 there all the time.</p>